

Serial No. 10/043 572 - Page 4

REMARKS

On behalf of Applicant, the undersigned wishes to thank Examiner McCormick-Ewoldt and Supervisory Examiner Campbell for their suggestions for addressing the objections and rejections in this case.

The various objections and rejections applied in the final rejection are substantially the same as they were in the final rejection prior to the filing of the request for continuing examination. Applicant is presenting a substitute specification that provides additional quantitative information and addresses the rejections and objections as follows:

SEQUENCING

A supplemental amendment addressing the sequence issue will be submitted in the near future.

DRAWINGS

Additional sheets of Figures 3 and 4 are included with this amendment, so this rejection is no longer applicable.

A. APPLICANT FAILED TO PROVIDE A COLOR DESCRIPTION FOR THE OBSERVED VARIETY WITH REFERENCE TO A RECOGNIZED COLOR CHART.

This rejection is no longer applicable because reference to a recognized color chart, namely the Royal Horticultural Society Color Chart, is positively set forth on page 3, lines 4-5 of the substitute specification. In this regard, the Examiner's attention is directed to pages 4-5 of the substitute specification.

B. SPECIFICATION FAILS TO SET FORTH AGE OF THE OBSERVED PLANT.

This rejection is no longer applicable because the age of 'V75024' is set forth in the paragraph bridging pages 2 and 3 of the substitute specification.

Serial No. 10/043 572 - Page 5

C. APPLICANT FAILS TO BE MORE DESCRIPTIVE WITH COMPARISON BETWEEN THE PARENTS 'SUNCLING' AND 'NEW JERSEY CLING 81' AND THE OBSERVED PLANT 'V75024'.

Applicant has no comparative data between the parents and the claimed variety.

D. ADDITIONAL INFORMATION SHOULD BE IMPORTED INTO THE SPECIFICATION RELATIVE TO HEIGHT AND SPREAD FOR THE OBSERVED TREE AT A SPECIFIED AGE AND LOCATION, AND/OR AMOUNT OF GROWTH OVER A SPECIFIC PERIOD OF TIME.

This rejection is no longer applicable because the height and spread of the tree is disclosed under the heading "Tree " on page 3 of the substitute specification. The second sentence of the "Detailed Discussion", beginning on page 2 of the substitute specification, states that the tree was observed at Vineland, Ontario. On page 3, under the heading "Tree", and subheading "Vigor", it is stated that the claimed cultivar grew 6 to 7 feet in height the first growing season.

E. INFORMATION SHOULD BE IMPORTED INTO THE SPECIFICATION RELATIVE TO PLANT VIGOR SO AS TO MORE MEANINGFULLY DESCRIBE THE PLANT.

This rejection is no longer applicable because plant vigor, in terms of height and width, is addressed in the substitute specification, page 3, under the heading "Tree".

F. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE TRUNK DIAMETER.

This rejection is no longer applicable because the trunk diameter is set forth page 4 of the substitute specification under the heading "Trunk".

G. APPLICANT FAILED TO SET FORTH A MORE DETAILED BOTANICAL DESCRIPTION RELATIVE TO BRANCH SIZE (DIAMETER), COLOR AND INTERNODE LENGTH.

This rejection is no longer applicable because the color, circumference, surface characteristics and crotch angles of

Serial No. 10/043 572 - Page 6

branches are described, in quantitative terms, under the heading "Branches" beginning on page 4 of the substitute specification.

H. APPLICANT FAILED TO DISCLOSE INFORMATION REGARDING THE AMOUNT (AVERAGE PER SQUARE INCH), SIZE AND COLOR OF THE LENTICELS.

This rejection is no longer applicable because color, size and frequency of lenticels are described, in quantitative terms, in the paragraph bridging pages 4 and 5 of the substitute specification.

I. APPLICANT FAILED TO DISCLOSE INFORMATION REGARDING THE SHAPE OF THE APEX AND BASE, SHAPE, MARGIN, TEXTURE, COLOR (BOTH SURFACES) VENATION PATTERN, VEIN COLOR AND LEAF ARRANGEMENT OF THE OBSERVED LEAF.

This rejection is no longer applicable because the substitute specification, page 5, discloses leaf characteristics, in quantitative terms. These include leaf length, leaf width, leaf color, upper and lower surfaces, texture, configuration lanceolate, anthers colors margins and number of glands.

J. APPLICANT FAILED TO DISCLOSE THE LENGTH, DIAMETER AND COLOR OF THE PETIOLE. THE RECITATION "MEDIUM-LONG, LONGER THAN THE COMPARATIVE VARIETIES" IS VAGUE AND INSUFFICIENT IN THIS REGARD.

This rejection is no longer applicable because the substitute specification, page 6, under the heading "leaves" describe the characteristics of the petiole. These characteristics include color, length and thickness.

K. APPLICANT FAILED TO DISCLOSE THE SHAPE, DIAMETER, LENGTH AND COLOR OF THE FLOWER BUD OF THE OBSERVED PLANT.

This rejection is no longer applicable because the substitute specification, page 6, under the heading "Flower Buds" discloses in quantitative terms characteristics of the

Serial No. 10/043 572 - Page 7

flower buds. These include diameter, length, configuration, pedicel, length, width and color.

L. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE AMOUNT, SIZE AND COLOR OF THE SEPALS.

Applicant has no data on the sepal.

M. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE FLOWER DIAMETER AS WELL AS THE SIZE (LENGTH AND WIDTH), SHAPE, MARGIN, COLOR (BOTH SURFACES), TEXTURE, SHAPE OF THE APEX AND BASE OF OBSERVED FLOWER PETAL. THE TERMS THE APPLICANT HAS DISCLOSED IN THE SPECIFICATION, I.E. "MEDIUM", "BURGUNDY", "ELONGATED", AND "MEDIUM PINK" ARE VAGUE AND INSUFFICIENT IN DESCRIBING THE FLOWER AND PETALS.

This rejection is no longer applicable because the characteristics of the flower are described under the heading "Flowers" on pages 6, 7 and 8 of the substitute specification. These include dates of bloom, petal color, petal numbers, pistil numbers and pistil color.

N. APPLICANT FAILED TO SET FORTH AN APPROXIMATE DATE OF BUD BURST AND BLOOM TIME IN THE SPECIFIED LOCATION OF CULTURE.

This rejection is no longer applicable because, as set forth in the discussion under M above, the date of bloom is specifically disclosed.

O. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE REPRODUCTIVE ORGANS AND DESCRIBE THESE STRUCTURES (COLORS, SIZES, AMOUNT).

This rejection is no longer applicable because the characteristics of the stamens and pistils are set forth in quantitative terms on pages 7 and 8 of the substitute specification, under the heading of "Flowers".

Serial No. 10/043 572 - Page 8

P. THE TERMS AND COLORS USED IN DESCRIBING THE OBSERVED FRUIT SHOULD BE IN QUANTITATIVE MEASUREMENT AND REFERENCED WITH AN EMPLOYED COLOR CHART.

This rejection is no longer applicable because the color of the fruit is described by referring to the RHS Color Chart.

Q. THE OBSERVED FRUIT WEIGHT SHOULD BE DISCLOSED IN THE SPECIFICATION.

This rejection is no longer applicable because the fruit diameter and circumference in quantitative terms are disclosed on page 8 of the substitute specification. Weight is not considered an important factor; however, size is.

R. APPLICANT FAILED TO DISCLOSE INFORMATION REGARDING THE STONE AND KERNEL WITH REGARD TO THE SIZE (LENGTH, DIAMETER), COLOR, TEXTURE AND SHAPE.

This rejection is no longer applicable because the description of the fruit stone, in quantitative terms, is disclosed on pages 10 and 11 of the substitute specification.

S. APPLICANT FAILED TO DISCLOSE KNOWN SHIPPING AND STORAGE CHARACTERISTICS OF THE OBSERVED VARIETY, FOR EXAMPLE, THE NUMBER OF DAYS THAT THE FRUIT HAS BEEN STORED UNDER SPECIFIC CONDITIONS.

This rejection is deemed no longer applicable because shipping and storage characteristics of 'V75024' are described in the substitute specification under the headings "Shipping Quality" and "Keeping Quality" and 'V75024'.

T. APPLICANT FAILED TO SET FORTH THE OBSERVED DATES OF FIRST AND LAST PICK IN THE SPECIFIC LOCATION OF CULTURE.

This rejection is deemed no longer applicable because the requested information is disclosed in the substitute specification on page 8 under the heading "Fruit" and subheading "Date of Maturity".

Serial No. 10/043 572 - Page 9

U. APPLICANT FAILED TO DISCLOSE INFORMATION TO THE
OBSERVED PLANT'S WINTER HARDINESS AND DROUGHT/HEAT TOLERANCE.

This rejection is no longer applicable because the substitute specification discloses the reaction of 'V75024' to cold.

In addition to the description of 'V75024' and its comparison to reference varieties 'Babygold 5', 'Babygold 7' and 'Catherina'; provided in terms of visual observation, DNA finger printing of them is described in the substitute specification beginning on page 12, Table 2, of the substitute specification. Page 16 of the substitute specification shows fragment sizes (bp) detected for 'V75024', 'Babygold 5', 'Babygold 7' and 'Catherina'. Different fragment sizes for 'V75024' are detected in the Pchcms2 marker and the UDP96-013 marker. The different fragment sizes are in bold type.

Respectfully submitted,


Sidney B. Williams, Jr.

SBW/cc/smd

FLYNN, THIEL, BOUTELL
& TANIS, P.C.
2026 Rambling Road
Kalamazoo, MI 49008-1631
Phone: (269) 381-1156
Fax: (269) 381-5465

Dale H. Thiel
David G. Boutell
Ronald J. Tanis
Terryence F. Chapman
Mark L. Maki
Liane L. Churney
Brian R. Tumm
Steven R. Thiel
Donald J. Wallace
Sidney B. Williams, Jr.

Reg. No. 24	323
Reg. No. 25	072
Reg. No. 22	724
Reg. No. 32	549
Reg. No. 36	589
Reg. No. 40	694
Reg. No. 36	328
Reg. No. 53	685
Reg. No. 43	977
Reg. No. 24	949

Encl: Clean Substitute Specification
Two Additional copies of Figures 3 and 4
Postal Card